



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Two-Year Professional Services Agreement (\$39,840) and to Execute Agreement Extensions with Crop Production Services, of Stockton, for White Slough Water Pollution Control Facility Land Application Area Monitoring

MEETING DATE: June 20, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute two-year professional services agreement in the amount of \$39,840 and to execute agreement extensions with Crop Production Services, of Stockton, for White Slough Water Pollution Control Facility land application area monitoring.

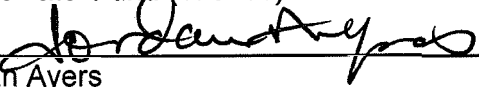
BACKGROUND INFORMATION: Farming operations at the White Slough Water Pollution Control Facility (WSWPCF) include the irrigation with recycled water and the application of biosolids for fodder crops that are cultivated on approximately 790 acres of City-owned farmland. In accordance with the City's National Pollutant Discharge Elimination System (NPDES) permit, the City is required to monitor the application of recycled water and biosolids to ensure that the fields are not organically or hydraulically overloaded.

To ensure that recordkeeping and management practices are fully compliant with the NPDES permit, the City has contracted for agronomist support services on an annual basis. The agronomist is required to sign and certify monthly reports, including the Annual Cropping and Irrigation Monitoring Report and Plan; conduct monthly site visits during the application of recycled water and biosolids; and coordinate irrigation and crop management practices with the farmers who lease these fields.

Services provided by the agronomist have resulted in improved land management and compliance with NPDES permit requirements. Due to the high quality of services and history with Crop Production Services, staff recommends a two-year professional services agreement be executed with provisions for two two-year extensions. Staff recommends that City Council authorize the City Manager to negotiate and execute the extensions, should that be in the best interest of the City.

FISCAL IMPACT: Failure to successfully manage the land application areas could result in NPDES permit violations and fines.

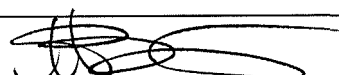
FUNDING AVAILABLE: Wastewater Fund (170403)


Jordan Ayers
Deputy City Manager/Internal Services Director


F. Wally Sandelin
Public Works Director

Prepared by Kathryn E. Garcia, Compliance Engineer
FWS/KMG/pmf
cc: Deputy Public Works Director - Utilities
Compliance Engineer

APPROVED:



Konradt Bartlam, City Manager

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE I PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Crop Production Services (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Agronomist Support for Completion of the City of Lodi White Slough Water Pollution Control Facility Land Application Area Monitoring (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on July 1, 2012 and terminates upon the completion of the Scope of Services or on June 30, 2014, whichever occurs first.

Section 2.7 Option to Extend Term of Agreement

At its option, City may extend the terms of this Agreement for an additional two (2) two (2)-year extensions; provided, City gives Contractor no less than thirty (30) days written notice of its intent prior to expiration of the existing term. In the event City exercises any option under this paragraph, all other terms and conditions of this Agreement, including the provisions of the Fee Proposal set forth in Exhibit B, continue and remain in full force and effect.

The total duration of this Agreement, including the exercise of any option under this paragraph, shall not exceed six (6) years.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advance and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement.

CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4 **GENERAL PROVISIONS**

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any subcontractor on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: Kathryn E. Garcia

To CONTRACTOR: Lew Baumbach
 Crop Production Services
 P. O. Box 5188
 Stockton, CA 95205-5188

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to

require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to

secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 Federal Transit Funding Conditions

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit _____ apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation


ATTEST:

RANDI JOHL
City Clerk

KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

CROP PRODUCTION SERVICES

By: _____


By: _____
Name: Lew Baumbach
Title: Crop Consultant/Agronomist

Attachments:
Exhibit A – Scope of Services & Fee Proposal
Exhibit B – Insurance Requirements

Funding Source: 170403.7323
(Business Unit & Account No.)

Doc ID:

CA:rev.01.2012

Annual Agronomist Support for Completion of City of Lodi WPCF Land Applications Area Monitoring.

TASK/NUMBER	SCOPE	DELIVERABLES	LABOR HOURS	OVERHEAD EXPENSE	Total Estimated Fee in dollars
1. MEETINGS	Participate in up to four (4) meetings with the City and their consultants, as needed, to discuss protocols for, and results of monitoring and reporting requirements.	None	4 hours X 2 meetings = 8 hours total.	None	\$960.00
	Provide coordination between the City staff and the farmers that lease the City property, as needed, to coordinate irrigation and crop management practices such that the permit requirements can be reliably met. It is anticipated that at least four (4) meetings with City, their consultants, and/or the farmers that lease the City property will be needed.	None	4 hours X 4 coordination meetings = 16 hours total.	None	\$1,920.00
Total estimated fee for Task # 1					\$2,880.00
2. Document Review and Signature	Review monthly report tables provided by City staff. Up to seven (7) monthly monitoring reports may be reviewed.				
	Pick-up hard copies of the monthly reports upon notification by City staff that they are available. The reports will be available no later than ten (10) days following the month for which the reports are generated (ie. Tables for April will be provided by May 10th.)	7 signed monthly reports	12 hours X 7 reports = 84 total hours.	None	\$10,080.00
	Provide review and signature of the Annual Cropping and Irrigation Management Plan.	None	2 hours	None	\$240.00
Total estimated fee for Task # 2					\$10,320.00
3. Site Visits	Conduct up to seven (7) monthly site visits during periods when City staff is conducting daily inspections of fields to verify that inspection and data collection efforts satisfy permit requirements	None	8 hours X 7 visits = 56 Total hours	None	\$6,720.00
Total estimated fee for Task #3					\$6,720.00
ANNUAL PROJECT FEE (PER 12 MONTH PERIOD)		Total Estimated Fee, in dollars			\$19,920.00

EXHIBIT A



5-413 Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- | | |
|---|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u> | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$1,000,000 Ea. Occurrence | \$1,000,000 Bodily Injury - Ea. Person |
| \$2,000,000 Aggregate | \$1,000,000 Bodily Injury - Ea. Occurrence |
| | \$1,000,000 Property Damage - Ea. Occurrence |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement
Such insurance as *is* afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

5-414 Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

NOTE: Certificate Holder Address: **City of Lodi**
221 West Pine Street
Lodi CA 95240

RESOLUTION NO. 2012-95

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
CITY MANAGER TO EXECUTE TWO-YEAR PROFESSIONAL
SERVICES AGREEMENT AND NEGOTIATE AND EXECUTE
AGREEMENT EXTENSIONS FOR AGRONOMIST SUPPORT FOR
COMPLETION OF WHITE SLOUGH WATER POLLUTION
CONTROL FACILITY LAND APPLICATION AREA MONITORING

=====

WHEREAS, farming operations at the White Slough Water Pollution Control facility include the irrigation with recycled water and the application of biosolids for fodder crops that are cultivated on approximately 790 acres of City-owned farmland surrounding the facility; and

WHEREAS, in accordance with the City's National Pollutant Discharge Elimination System permit, the City is required to monitor the application of the recycled water and biosolids to ensure that the fields are not organically or hydraulically overloaded; and

WHEREAS, to ensure that the land application area recordkeeping and management practices are successful, the City has contracted for agronomist support services on an annual basis, and because of the high quality of services and history with Crop Production Services, of Stockton, California, staff recommends a two-year professional services agreement for these services be executed; and

WHEREAS, the professional services agreement contains provisions for two 2-year extensions, and staff recommends the City Manager be authorized to negotiate and execute the extensions, should that be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a two-year Professional Services Agreement with Crop Production Services, of Stockton, California, in the amount of \$39,840, for agronomist support for completion of White Slough Water Pollution Control Facility application area monitoring; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to negotiate and execute up to two 2-year extensions.

Dated: June 20, 2012

=====


I hereby certify that Resolution No. 2012-95 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 20, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Nakanishi

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk